

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

SKKY, LLC,

Plaintiff,

v.

FACEBOOK, INC. AND  
INSTAGRAM, LLC,

Defendants.

Case No. 0:16-cv-00094-WMW-FLN

**JURY TRIAL DEMANDED**

**DECLARATION OF JUSTIN HULSE IN SUPPORT OF FACEBOOK, INC. AND  
INSTAGRAM, LLC'S MOTION TO TRANSFER VENUE TO THE NORTHERN  
DISTRICT OF CALIFORNIA UNDER 28 U.S.C. § 1404**

I, Justin Hulse, hereby declare:

1. My name is Justin Hulse. I am over the age of twenty-one and I am fully competent to make this declaration. I provide this declaration in support of Facebook, Inc. and Instagram, LLC's ("Defendants") motion to transfer this action to the United States District Court for the Northern District of California. I declare that the following statements are true to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances. If called upon to testify, I could and would competently testify thereto.

2. I am an attorney with the law firm of Cooley LLP. I am also an attorney of record for Defendants, having been admitted by the Court to practice *pro hac vice* in this case.

3. Attached as Exhibit A is a true and correct copy of the Certificate of

Conversion and Certificate of Formation for Skky, LLC (“Skky”) certifying its conversion from Skky, Incorporated, a corporation, to a Delaware limited liability company on November 17, 2015.

4. Attached as Exhibit B is a true and correct copy of Skky’s Form D, filed with the United States Securities and Exchange Commission on December 15, 2015, listing the principal place of business and contact information as 888 Colwell Building, 123 North Third Street, Minneapolis, Minnesota, 55401 and the phone number as 612-767-3000. Exhibit B also identifies the following persons as officers and/or directors: John P. Mikkelsen; Robert I. Freidson; Andrew Parker; Rod McGrew; Robert Naegele, III; and Elliot Karathanasis.

5. Attached as Exhibit C is a true and correct copy of the website [www.parkerrosen.com/firm/](http://www.parkerrosen.com/firm/), accessed July 11, 2016, apparently owned by litigation law firm Parker Rosen, LLC. Exhibit C lists the main office of Parker Rosen as 888 Colwell Building, 123 Third Street North, Minneapolis, Minnesota, 55401.

6. Attached as Exhibit D is a true and correct copy of the GoDaddy.com web result (<http://wavpop.com/?reqp=1&reqr=>) that appeared when I attempted to access [www.wavpop.com](http://www.wavpop.com) on July 11, 2016. Exhibit D shows that while such a domain name has been parked, no actual website for [www.wavpop.com](http://www.wavpop.com) is currently accessible.

7. Attached as Exhibit E is a true and correct copy of the website [www.wavpop.net](http://www.wavpop.net), accessed July 11, 2016. Exhibit E includes “User name” and “Password” prompts but no apparent way to sign up for service or membership.

8. Attached as Exhibits F and G are true and correct copies of web results

([www.alexa.com/siteinfo/wavpop.com](http://www.alexa.com/siteinfo/wavpop.com) and [www.alexa.com/siteinfo/wavpop.net](http://www.alexa.com/siteinfo/wavpop.net)) from web traffic analytics company Alexa.com showing no data and/or history of web traffic to [www.wavpop.com](http://www.wavpop.com) or [www.wavpop.net](http://www.wavpop.net), respectively.

9. After searching publicly available information about Skky, I have found no evidence of products, sales, marketing, or development activities. Skky's only online presence that I am aware of is in news reports, posts, and articles regarding patent infringement lawsuits filed by Skky. I am also unaware of any relevant Skky employees in Minnesota, other than Mr. Mikkelsen.

10. Attached as Exhibit H is a true and correct copy of redacted excerpts of a LexisNexis Accurint report for John P. Mikkelsen, dated July 11, 2016. Exhibit H identifies previous residence addresses, including addresses in Minnesota and California.

11. Attached as Exhibit I is a true and correct copy of a LinkedIn webpage for Robert Freidson ([www.linkedin.com/in/robert-freidson-446157a](http://www.linkedin.com/in/robert-freidson-446157a)), accessed July 11, 2016. Exhibit I shows Mr. Freidson's location to be Saint Petersburg, Russian Federation.

12. Attached as Exhibit J is a true and correct copy of a LinkedIn webpage for Andrew Parker ([www.linkedin.com/in/andrew-parker-0629386](http://www.linkedin.com/in/andrew-parker-0629386)), accessed July 11, 2016. Exhibit J shows Mr. Parker's location to be the Greater Minneapolis-St. Paul area and his profession to be "Law Practice."

13. Attached as Exhibit K is a true and correct copy of the website [www.parkerrosen.com/directions/](http://www.parkerrosen.com/directions/), accessed July 11, 2016, apparently owned by litigation law firm Parker Rosen, LLC. Exhibit K lists the main office of Parker Rosen as 888 Colwell Building, 123 Third Street North, Minneapolis, Minnesota, 55401. It also identifies

Andrew D. Parker as an attorney of Parker Rosen, LLC.

14. Attached as Exhibit L is a true and correct copy of results of a LexisNexis Accurint search for Rod McGrew (attorney work product redacted), attempted on July 11, 2016. Exhibit L shows no records of addresses for Rod McGrew in Minnesota.

15. Attached as Exhibit M is a true and correct copy of results of a LexisNexis Accurint search for Elliot Karathanasis (attorney work product redacted), attempted on July 11, 2016. Exhibit M shows no records of addresses for Elliot Karathanasis in Minnesota.

16. Attached as Exhibit N is a true and correct copy of a LinkedIn webpage for Bob Naegele ([www.linkedin.com/in/bob-naegele-35114a5](http://www.linkedin.com/in/bob-naegele-35114a5)), accessed July 11, 2016. Exhibit N shows Mr. Naegele's location to be Denver, Colorado.

17. Attached as Exhibits O and P are true and correct copies of webpages from who.godaddy.com ([https://who.godaddy.com/whoisstd.aspx?domain=wavpop.com&prog\\_id=GoDaddy](https://who.godaddy.com/whoisstd.aspx?domain=wavpop.com&prog_id=GoDaddy) and [https://who.godaddy.com/whoisstd.aspx?domain=wavpop.net&prog\\_id=GoDaddy](https://who.godaddy.com/whoisstd.aspx?domain=wavpop.net&prog_id=GoDaddy), respectively), accessed July 11, 2016. Exhibits O and P show no name ("Registration Private") for the registrant of the domain names [www.wavpop.com](http://www.wavpop.com) and [www.wavpop.net](http://www.wavpop.net) but do list a registrant address, which is located in Arizona.

18. Attached as Exhibit Q is a true and correct copy of a screen shot of a PC command console I used to "ping" the website [www.wavpop.net](http://www.wavpop.net), showing a corresponding IP address of 70.167.156.65 and a web result (<http://www.ip2location.com/demo/70.167.156.65>) from ip2location.com, a company which provides geographic locations for given IP addresses, accessed July 11, 2016. Exhibit Q identifies Millennium Systems, of Irvine California, as the Internet Service

Provider (ISP).

19. Attached as Exhibit R is a true and correct copy of the website [www.millsysinc.com/about.php](http://www.millsysinc.com/about.php), accessed July 11, 2016. Exhibit R shows Millennium Systems to be a company that provides IT consulting, cloud servers, and web hosting from Irvine, California.

20. Attached as Exhibit S is a compilation containing true and correct copies of cover pages from U.S. prior art references identified on the faces of the patents-in-suit, with my annotations to indicate location of named inventors. Exhibit S shows that at least 75 of the US patents and patent applications identified as relevant prior art have named inventors listed as residing in the Northern District of California and at least 55 of those references have named inventors listed as residing elsewhere in California. Exhibit S also shows that those prior art patents and patent applications identify at least 120 individuals as named inventors, listed as residing in the Northern District of California and at least 100 individuals listed as residing elsewhere in California. Exhibit S is annotated to show inventors listed as residing within the Northern District of California (locations highlighted in yellow) and listed as residing elsewhere in California (locations highlighted in green). Exhibit S further shows that at least 6 of the prior art references list Trimble Navigation Ltd. as the original assignee (Exhibit S (part 2) at pp. 39, 41-43, 45, 47); at least 5 of the references list Sun Microsystems, Inc. as the original assignee (Exhibit S (part 1) at pp. 18, 50; Exhibit S (part 2) at pp. 6, 28; Exhibit S (part 3) at p. 30); and 1 lists Stanford University as original assignee (Exhibit S (part 2) at p. 40).

21. Attached as Exhibit T is a compilation containing true and correct copies of

cover pages from U.S. prior art references identified on the faces of the patents-in-suit, with my annotations to indicate location of named inventors. Exhibit T shows that only 5 of the US patents and patent applications identified as relevant prior art have named inventors (other than Mr. Mikkelsen) listed as residing in Minnesota. These 5 patents and patent applications identify only six named inventors (other than Mr. Mikkelsen) as residing in Minnesota.

22. Attached as Exhibit U are true and correct copies of the website [www.apple.com/contact/](http://www.apple.com/contact/) and the website [www.apple.com/shop/buy-iphone/iphone6/](http://www.apple.com/shop/buy-iphone/iphone6/) apparently owned by Apple, Inc, accessed July 11, 2016. Exhibit U shows that Apple's headquarters is in Cupertino, California. Exhibit U also shows the availability of the iPhone 6, as well as other iPhones, for purchase from Apple.

23. Attached as Exhibit V is a true and correct copy of the website [www.google.com/intl/en/contact/](http://www.google.com/intl/en/contact/) and the website [www.google.com/about/careers/locations/mountain-view/](http://www.google.com/about/careers/locations/mountain-view/) owned by Google Inc., accessed July 11, 2016. Exhibit V shows the global headquarters of Google to be in Mountain View California. Exhibit V also shows that Google develops its products, including the Android operating system, from its Mountain View campus.

24. Attached as Exhibit W is a true and correct copy of the website [www.qualcomm.com/company/facilities/offices](http://www.qualcomm.com/company/facilities/offices) and the website [www.qualcomm.com/products/](http://www.qualcomm.com/products/) owned by Qualcomm Technologies, Inc. Exhibit W shows that Qualcomm's headquarters is in San Diego, California. Exhibit W also shows that Qualcomm offers various products to be used for or in cellular phones.

25. Attached as Exhibit X is a true and correct copy of *Prism Technologies, LLC v. Verisign, Inc.*, Case No. 8:08-cv-00195, slip op. (D. Neb. Nov. 7, 2008).

26. Attached as Exhibit Y is a true and correct copy of *Jet Imports LLC v. Whak Sak Industries, Inc.*, Case No. 4:09-cv-00421-JAJ, slip op. (S.D. Iowa Feb. 11, 2010).

27. Attached as Exhibit Z are true and correct copies of web results from United Airlines, accessed July 13, 2016. Exhibit Z shows flight times and costs for flights from St. Petersburg, Russia to Minneapolis, Minnesota ([www.united.com/ual/en/us/flight-search/book-a-flight/results/rev?f=LED&t=MSP&d=2016-08-01&tt=1&sc=7&px=1&taxng=1&idx=1](http://www.united.com/ual/en/us/flight-search/book-a-flight/results/rev?f=LED&t=MSP&d=2016-08-01&tt=1&sc=7&px=1&taxng=1&idx=1)) and from St. Petersburg, Russia to San Francisco, California ([www.united.com/ual/en/us/flight-search/book-a-flight/results/rev?f=LED&t=SFO&d=2016-08-01&tt=1&sc=7&px=1&taxng=1&idx=1](http://www.united.com/ual/en/us/flight-search/book-a-flight/results/rev?f=LED&t=SFO&d=2016-08-01&tt=1&sc=7&px=1&taxng=1&idx=1)).

28. Attached as Exhibit AA are true and correct copies of web results from United Airlines, accessed July 13, 2016. Exhibit AA shows flight times and costs for flights from Denver, Colorado to Minneapolis, Minnesota ([www.united.com/ual/en/us/flight-search/book-a-flight/results/rev?f=DEN&t=MSP&d=2016-08-01&tt=1&sc=7&px=1&taxng=1&idx=1](http://www.united.com/ual/en/us/flight-search/book-a-flight/results/rev?f=DEN&t=MSP&d=2016-08-01&tt=1&sc=7&px=1&taxng=1&idx=1)) and from Denver, Colorado to San Francisco, California ([www.united.com/ual/en/us/flight-search/book-a-flight/results/rev?f=DEN&t=San+Francisco,+CA,+US+\(SFO+-+All+Airports\)&d=2016-08-01&tt=1&sc=7&px=1&taxng=1&idx=1](http://www.united.com/ual/en/us/flight-search/book-a-flight/results/rev?f=DEN&t=San+Francisco,+CA,+US+(SFO+-+All+Airports)&d=2016-08-01&tt=1&sc=7&px=1&taxng=1&idx=1)).

29. Attached as Exhibit BB is a true and correct copy of an excerpted report, generated on July 13, 2016, from legal research website [law.lexmachina.com](http://law.lexmachina.com) showing that the median time to trial in the Northern District of California is 892 days for patent cases.

Exhibit BB also shows that the median time to claim construction in the Northern District of California is 415 days for patent cases.

30. Attached as Exhibit CC is a true and correct copy of an excerpted report, generated on July 13, 2016, from legal research website law.lexmachina.com showing that the median time to trial in the District of Minnesota is 971 days for patent cases. Exhibit CC also shows that the median time to claim construction in the District of Minnesota is 547 days for patent cases.

31. Based on a search of Pacer (<https://pcl.uscourts.gov/search>) and the U.S. Patent and Trademark Office database (<https://ptrabtrials.uspto.gov>), I understand that Skky has also sued multiple parties in the District of Minnesota for infringement of U.S. Patent No. 7,548,875, which was rejected as unpatentable by the Patent Trial and Appeal Board during *inter partes* review. See *Skky, Inc. v. Playboy Enterprises, Inc.*, Case No. 0:13-cv-02089-PJS-JJG (D. Minn.) (“Playboy litigation”). Because Skky dropped the ’875 patent from its First Amended Complaint in this case (ECF No. 16), I am not aware of any overlapping legal claims between this and the Playboy litigation.

32. As of the time of this Declaration, I am not aware of any discovery between the parties having taken place. Nor am I aware of any hearings or rulings on the merits of this case having taken place. In addition, I am not aware of any counterclaims or countersuits of Defendants against Skky.

33. Attached as Exhibit DD is a true and correct copy of web results ([www.docketnavigator.com/brows/results/e0c8a8a5-e8f3-7ae6-72cb-cd828cb15969](http://www.docketnavigator.com/brows/results/e0c8a8a5-e8f3-7ae6-72cb-cd828cb15969)) from legal research tool Docket Navigator, accessed July 13, 2016. Exhibit DD shows



Northern District of California cases in which Skky's outside counsel (Ronald Schutz, Cyrus Morton, Ryan Schultz, Benjamin Linden, all of Robins Kaplan LLP) have made an appearance. Exhibit DD shows that Skky's outside counsel have appeared in twenty cases in the Northern District of California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration is being executed on July 14, 2016 in Palo Alto, California.

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s/Justin Hulse  
Justin Hulse